

## Review article

## Open Access

Mauro Piras, Paola Delbon, Adelaide Conti, Vincenzo Graziano\*, Emanuele Capasso, Massimo Niola, Paola Bin

# Cosmetic surgery: medicolegal considerations

DOI 10.1515/med-2016-0044

received June 27, 2016; accepted July 7, 2016

**Abstract:** Cosmetic surgery is one of the two branches of plastic surgery. The characteristic of non-necessity of this surgical speciality implies an increased severity in the evaluation of the risk-benefit balance. Therefore, great care must be taken in providing all the information necessary in order to obtain valid consent to the intervention. We analyzed judgments concerning cosmetic surgery found in national legal databases. A document of National Bioethics Committee (CNB) was also analyzed. Conclusion: The receipt of valid, informed consent is of absolute importance not only to legitimise the medical-surgical act, but it also represents the key element in the question concerning the existence of an obligation to achieve certain results/use of certain methods in the cosmetic surgery.

**Keywords:** Cosmetic surgery; Informed consent; Obligation of methods; Obligation of result

## 1 Introduction

Cosmetic surgery is one of the two branches of plastic surgery and is characterised by the desire of the patient to improve an aspect or feature of his/her body, which he, or much more often she, perceives to be an imperfection.

From the point of view of legal medicine, the most important subjects concerning cosmetic surgery include the receipt of informed consent and the obligation to achieve a specific result and use of certain surgical treatment methods.

We analyzed judgments concerning cosmetic surgery found in national legal databases using these search terms: “cosmetic surgery”. We also examined a document concerning cosmetic surgery written by the CNB ([www.presidenza.governo.it](http://www.presidenza.governo.it)).

## 2 Discussion

### 2.1 Informed consent

Informed consent is an essential starting point and is a moral obligation for all surgical treatments. It must be understood to be an expression of the informed agreement to undergo the medical treatment offered by the doctor. Informed consent represents a true human right and has its foundation in the principles established in Article 2 of the Italian Constitution, which safeguards and promotes basic human rights, and by Articles 13 and 32 of the Italian Constitution, which establish that personal freedom is inviolable and that no one can be obliged to undergo any particular medical treatment, unless by legal requirement.

On the necessity of receiving informed consent, the Supreme Court, in 2013 [1], affirmed that informed consent, for the purposes of ascertaining criminal liability, is not a decisive factor for the legitimacy of medical activity. This is because the informed consent expressed by a patient that has been fully informed about the effects and possible contraindications of a surgical intervention, is only a

\*Corresponding author: Vincenzo Graziano, Department of Advanced Biomedical Sciences, University of Naples “Federico II”. Via S. Pansini 5, 80131, Naples, Italy, E-mail: [vincenzo.graziano2@unina.it](mailto:vincenzo.graziano2@unina.it)

Mauro Piras, Paola Bin, Department of Surgery, Radiology and Public Health, Public Health and Humanities Section, University of Brescia Italy – Forensic Medicine Institute, 25123 Brescia, Italy  
Paola Delbon, Adelaide Conti, Department of Surgery, Radiology and Public Health, Public Health and Humanities Section, University of Brescia – Centre of Bioethics Research, 25123 Brescia, Italy  
Emanuele Capasso, Massimo Niola, Department of Advanced Biomedical Sciences, University of Naples “Federico II”, 80131, Naples, Italy

The Authors have no conflict of interest or any financial support

true assumption of the legitimacy of the activity carried out by the doctor who administers the treatment, to whom no general right to administer healthcare is assigned, irrespective of the will of the patient; this applies even more strongly in the field of cosmetic surgery, due to its nature as non-emergency medicine.

Therefore, a surgical procedure carried out without a provision of valid, informed consent by the patient represents a breach of the individual's rights to health and self-determination. These two rights safeguard different principles and it is possible to breach one but not another.

The right to self-determination is considered breached in all cases in which the surgical procedure is carried out following incorrectly provided informed consent by the patient. Indeed, if the treatment undertaken without valid consent leads to an improvement to the patient's health, the right to self-determination of the patient has still been breached.

Even more so, doctor's conduct assumes the character of non-legitimacy when, in the event of an invalid informed consent, occur post-operative complications, resulting in a breach of the individual's rights to health and self-determination. In this sense, the Supreme Court pronounced in 2015 [2] confirming the verdict against a cosmetic surgeon, guilty of personal injuries, and condemned him to two months imprisonment (suspended) and compensation for the damage for having treated a woman with cosmetic injections of the face, without a valid informed consent, after which she developed an orofacial granuloma and a scar.

Furthermore, even in the event of the exclusion of any causal link between the surgical treatment and any subsequent post-surgical complications (even via expert witness reports by the magistrate), the non-legitimacy of the doctor's conduct would remain as such, in that the unjustified breaching of the right to self-determination would persist.

In the case of surgical treatment not legitimised by valid informed consent, the only possible condition the doctor could recall as cause of justification is the connotation of necessity of treatment. In the case of cosmetic surgical interventions, it is clear that the state of necessity cannot be recalled as an element of treatment validation, given that they are, as mentioned above, procedures undertaken for the purposes of correcting imperfections and not for safeguarding health [3].

## 2.2 Obligation of results

The receipt of valid, informed consent is of absolute importance not only to legitimise the medical-surgical act, but it also represents the key element in the question concerning the existence of an obligation to achieve certain results/use of certain methods in the cosmetic surgery.

Given the objective non-necessity of cosmetic surgery, this branch of surgery has been recognised as unique and different from all other surgical specialities. This characteristic of non-necessity implies an increased severity in the evaluation of the risk-benefit balance. Therefore, great care must be taken in providing all the information necessary in order to obtain valid consent to the intervention; information classified by the Supreme Court as "*particularly significant*" [4].

In cosmetic surgery, as in all surgeries, complications may arise both intra- and post-surgery, and the result of an intervention is tied to both the surgeon's ability and to factors for which he/she is not responsible, such as patient tissue reactivity.

The obligation of the surgeon is to inform the patient, very clearly and intelligibly, of the intervention methods and times, of the side effects and the risks that may be connected to the treatment [5]. Given that, as sustained by the Supreme Court in judgement n. 12830 of 06.06.2014, when a cosmetic surgery procedure causes an imperfection greater than that which it aimed to remove or improve, once it is ascertained that the patient had not been fully, carefully and scrupulously informed of such a possible outcome, the liability for the damage caused is, according to usual practice, assigned to the doctor, even if the procedure was carried out correctly.

In consideration of the above, it follows that for case law, cosmetic surgery is no longer tied, as it was up until a few years ago, to the unavoidable obligation to achieve certain results, for which the surgeon's conduct could be deemed improper whenever the cosmetic surgery intervention led to an imperfection greater than that which it aimed to remove or improve.

The Corte di Cassazione already pronounced on this matter in 1994 [6], affirming that, in cosmetic surgery treatments, the health worker may assume the simple obligation of methods used (for which the surgeon undertakes to offer his/her own intellectual work for the aim of achieving the pre-established result, not necessarily for actually achieving it) as well as the obligation of achieving certain results, the latter to be understood not as an unconditional fact but to be evaluated with reference to prior circumstances and to the

objective possibility awarded by the progress achieved by operational techniques.

And again the Supreme Court, in 2006 [7], affirmed that the non-fulfilment by the professional (doctor) of his/her obligation cannot be deduced, *ipso facto*, based on his/her failure to achieve the result expected by his/her client (patient).

### 2.3 Cosmetic surgery on minors, an opinion of National Bioethics Committee

Finally, in relation to cosmetic surgery carried out on those under the age of consent, The National Bioethics Committee stated their opinion in a document published on 05.07.2012 [8]. In the case of treatments on underage individuals, obtaining informed consent must, first and foremost, be based on the authorisation of both parents (or their legal representatives) to undertake an intervention, as well as on thorough information of the risks and benefits of the treatment provided to the minor by expert medical staff, with a level of information suited to the minor's level of understanding. It is to be noted that, in Italy, as established by Article 2 of Law 86/2012, it is not possible to carry out a cosmetic breast implant surgery on a minor, unless in the cases provided for by law (serious congenital breast malformations, certified by a National Health Service doctor).

## 3 Conclusions

Informed consent is an essential starting point and is a moral obligation for all surgical treatments. Given the objective non-necessity of cosmetic surgery, great care must be taken in providing all the information necessary in order to obtain valid consent to the intervention. The receipt of valid, informed consent is of absolute importance not only to legitimise the medical-surgical act, but it also represents the key element in the question concerning the existence of an obligation to achieve certain results/use of certain methods in the cosmetic surgery. Cosmetic surgery is not a tie to the obligation to achieve certain results, but is a tie to the obligation of methods used.

**Conflict of interest statement:** Authors state no conflict of interest.

## References

- [1] Cass. Pen., 27/11/2013, n. 2347
- [2] Cass. Pen., 15/01/2015, n. 4613
- [3] Cass. Civ., 06/06/2014, n. 12830
- [4] Cass. Civ., 06/10/1997, n. 9705
- [5] G. Giusti, *Trattato di medicina legale e scienze affini*, II ed, Padova, ed. CEDAM, 2009
- [6] Cass. Civ., 25/11/1994, n. 10014
- [7] Cass. Civ., 09/11/2006, n. 23918
- [8] Comitato Nazionale per la Bioetica, *Aspetti bioetici della chirurgia estetica e ricostruttiva*, 5/07/2012